

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING THURSDAY, FEBRUARY 9, 1995

Acting Chair Mosbarger called the meeting to order at 1:45 p.m. at the Ramada Governor House Hotel, Olympia, Washington.

MEMBERS PRESENT: **WANDA MOSBARGER**, Vice Chair, **PATRICK GRAHAM** and **EDWARD HEAVEY**.

OTHERS PRESENT: **FRANK L. MILLER**, Director; **BEN BISHOP**, Deputy Director; **CARRIE SUTHERLAND**, Special Assistant, Public Affairs; **SHERRI WINSLOW**, Assistant Director, Field Operations; **JONATHAN McCOY**, Assistant Attorney General; **PATTI COUMERILH**, Financial Investigations; **SHARON TOLTON**, Assistant Director, Special Operations; and **SUSAN GREEN**, Executive Assistant.

Acting Chair Mosbarger asked if there were any staff reports. **Director Miller** stated the staff reports would be given tomorrow. **Acting Chair Mosbarger** called for License approvals.

LICENSE APPROVALS

NEW LICENSES, CHANGES, WITHDRAWALS, and TRIBAL CERTIFICATIONS

Commissioner Graham moved for approval of the list as printed; **Commissioner Heavey** seconded the motion; motion carried with three aye votes.

REVIEW OF FRIDAY'S AGENDA

Ms. Sutherland said there is a petition package of rules for final action that relates to the local taxing issues; there are three rules as part of that petition. There will be a discussion on a package relating to the licensing of gambling managers, on a package relating to commercial stimulant rules, and on raffle rules. In addition, there is one housekeeping rule for discussion. For discussion and possible filing are two housekeeping changes. There is an addendum to the agenda, which is a petition by the Recreational Gaming Association to change the card room closure hours from 2:00 a.m. to 6:00 a.m. to 4:00 a.m. to 8:00 a.m. One other note for today's agenda, the formal review of Big Brothers and Big Sisters of Tacoma will be moved to the March meeting. Also tomorrow, the WCCGA would like to make a 10 minute presentation. There will be an Executive Session today and tomorrow. **Acting Chair Mosbarger** asked for

any questions or comments on Friday's agenda.

HEARING

The Shed, Inc., d/b/a The Pine Shed Restaurant, Spokane CR 93-0691 -- Request for Reconsideration

Ms. Sutherland said that Bob Racicot came before the Commission in Spokane at the November (1994) meeting and requested reconsideration of his fine. He asked for a reduction or restructuring of the fine. Currently, the fine has been paid to date. Half of the last payment was made and he would like to restructure the second half or ask that it be reduced. Staff recommends lowering the payments from \$2,000 a month to \$1,000 a month, which would allow Mr. Racicot to extend the fine over a longer period of time with the total fine remaining unchanged. Final payment would be due January of 1998. The fine was based on agency cost so staff feels strongly that the fine should remain the same. **Director Miller** said looking at the present amount of business Mr. Racicot is generating in his card room, it would be easier to reduce the monthly payment amount and extend the term. **Mr. McCoy** said when the issue was raised in November, the Commission asked him to look at the possibility of doing this; however, there is no formal procedure under the rules of the Commission for reopening an order. The appeal period was past so he suggested to Mr. Racicot that he request to reopen based on a change in circumstances. **Mr. McCoy** said this is not something the Commission has done in the past. It would be a unique decision and the Commission may want to consider making a rule change to handle cases like this in the future.

Ms. Sutherland stated that Mr. Racicot is present and would like to approach the Commission. **Mr. Racicot** of The Shed Restaurant in Spokane, said he came before the Commission in November in Spokane and stated at that time that, with the fine assessed upon him, he could not operate the card room properly. He was fined \$58,000 over the two-year period with the \$10,000 down. He has currently paid \$21,000. This last quarter he was unable to pay the \$6,000 so he called the Gambling Commission and it was suggested to him that he pay \$3,000 until he could come before the Commission. He thanked Mr. Miller for suggesting that the fine be extended over a longer period of time. He said he has a hard time because he is being held solely responsible. He said his pit bosses were the ones arranging games and now he is responsible for paying the Gambling Commission's expenses as a result of the investigation. He said the court in Spokane is near throwing out the cases.

Director Miller said Mr. Racicot is referring to the criminal cases pending in Spokane. There were quite a few arrests. There have been comments in the media lately about a judge questioning the player definition as being too vague and may be dismissing some of the charges. He said the case against The Shed was an administrative action and should be treated separately from the criminal case. There were still problems regarding hidden ownership. **Director Miller** said staff does not support a reduction of the fine. **Mr. Racicot** said he would appreciate the Commission looking at this issue with an open mind.

Commissioner Graham asked if the judge recommended that the license be taken away. **Director Miller** said the original order summarily suspended both the pull tab and the card room

licenses. It went to a hearing and the Commission overturned the judge's ruling of revocation and Mr. Racicot was fined. This was a very lengthy undercover investigation. He said it was the largest fine against a licensee.

Acting Chair Mosbarger noted the Commission isn't prepared to make a decision of reducing the fine but the Commission could consider lowering the payment. **Commissioner Graham** moved to accept the recommendation of staff and extend the payments at the lower amount. **Mr. McCoy** asked for clarification on the deferred period of time, and if extending the payments also extends the suspension deferral period as well. **Director Miller** stated the suspension deferral period would have to be extended. **Commissioner Heavey** seconded the motion; **Commissioner Heavey** offered an amendment stating that if the licensee is in default for more than two months, then the fine payment amount would go back up to \$2,000. **Commissioner Graham** seconded the amendment. **Mr. Racicot** asked if he had to close the card room, would he be able to keep his pull tabs and fishbowls. **Director Miller** said the action was taken on all licenses and he would not be able to keep his licenses because he would have to fulfill the penalty. Vote taken on the motion as amended; motion carried as amended with three aye votes. **Director Miller** requested that Mr. McCoy draft an amended order.

DEFAULT HEARING

James G. Warner, d/b/a The Place, Battleground
CR 94-1154 -- Punchboard/Pull Tab License

Ms. Sutherland said this licensee is no longer in business and did not respond to notification that they were delinquent in submitting activity reports. Staff recommends a one year revocation. **Commissioner Heavey** asked why the Commission doesn't just revoke their license indefinitely since there was a death. **Ms. Sutherland** said if someone else in the business might apply for a gambling license, perhaps they shouldn't be penalized since the underlying charge was just failure to submit reports on time. **Commissioner Heavey** asked if these individuals could reapply for a license. **Mr. Bishop** explained that if they were to apply within the year period of time, the staff would probably deny the application for that first year. **Ms. Sutherland** further explained that usually the basis for recommendation is based on the underlying charge in a default and the seriousness of the charge. **Commissioner Heavey** moved for one year revocation; **Commissioner Graham** seconded the motion; motion carried with three aye votes.

QUALIFICATION REVIEWS

Ms. Coumerilh said that Big Brother/Big Sisters of Tacoma will be presenting its formal review in March instead of at this meeting.

SEATTLE JAYCEES, Seattle

Ms. Coumerilh said this is a civic organization with a Class "M" bingo license, a Class "L" punchboard/pull tab license, and a Class "E" raffle license. The organization was formed in 1936 and currently has 404 voting members. The organization maintains a full-time

administrative office in Seattle; they also operate two other nonprofit subsidiary organizations. The organization also has three youth programs: Clients served were 36 individuals including 5 members of the organization and approximately 1,500 members of the general public. Contributions totaled \$71,903; scholarships were \$39,282. Net gambling revenues totaled \$426,362; bingo net income was \$381,583. The organization spent \$495,861 in support of its stated purpose. The organization continued its support of the Woodland Park Zoo. Staff recommends approval as a civic organization.

Commissioner Graham said that he noted that John Tilsborrow, who is the business manager, also has a second job as the financial officer and asked for whom. **Ms. Coumerilh** said his job is with a fishing company and he only works 40 hours there, and between the two positions works 7 days a week.

SEATTLE JUNIOR HOCKEY ASSOCIATION

Ms. Coumerilh said this is an athletic organization with a Class "M" bingo license, a Class "O" punchboard/pull tab license, and licenses for Class "E" amusement games and Class "A" raffles. The organization was first formed in 1974 and currently has 44 voting members. The organization maintains a full-time administrative office in Mountlake Terrace. Office expenses are shared with Northwest Amateur Hockey Association. Clients served during the year totaled 1,025. Contributions totaled \$96,917; Scholarships totaled \$49,374, for 11 students, and Sponsorships totaled \$3,616. Net gambling revenues totaled \$1,211,941. Bingo net income totaled \$1,650,000. The organization spent \$1,377,520 in support of its purposes. The group completed its Olympic-size ice arena project. Staff recommends approval as an athletic organization.

B.P.O.E. #823, Vancouver

Ms. Coumerilh said this is a fraternal organization with a Class "H" bingo license, and a Class "G" license in punchboards/pull tabs. First formed in 1902, there are currently 1,427 voting members. The organization maintains a facility that serves as an activity center for members and is open 7 days per week. Clients served were 5,000 members of the general public and 1,427 members of the organization. Contributions totaled \$36,753. Scholarships totaled \$15,500. Net gambling was \$158,398. Net bingo income was \$108,376. The organization continues to provide charitable contributions to youth activities in its community. Staff recommends approval as a fraternal organization.

SILVER BUCKLE RODEO CLUB, Vancouver

Ms. Coumerilh said this is an athletic organization with a Class "H" bingo license, and a Class "H" license in punchboards/pull tabs. The organization was first formed in 1978 and there are 52 voting members. The organization maintains two arenas, livestock barns on a fenced 60 acre parcel in Vancouver. Clients served were 4,553 members of the general public. Contributions totaled \$12,127. Scholarship totaled \$2,500. Sponsorships totaled \$22,210. Net

gambling revenues totaled \$263,097. Bingo net income was \$221,171. This organization spent \$250,198 in support of its stated purposes. The organization renovated the riding arena and livestock barns in 1993, added a watering system and a state-of-the-art lighting system for safety. With these improvements, Silver Buckle was able to able to conduct many more programs and fund raising activities. Staff recommends qualification as an athletic organization for the purposes of conducting gambling in the state of Washington. **Commissioner Graham** asked about the number of clients served and how much the number has increased; **Michelle Bernhardt**, Silver Buckle Rodeo Club, said the number of general public has increase by approximately 1,500 clients in the last three years. **Commissioner Graham** also asked if any of the present board members are related. **Ms. Bernhardt** said no they are not. **Director Miller** commented that Silver Buckle has had some problems in the past and staff is very pleased with their improvements.

Acting Chair Mosbarger called for a motion for certification of the above organizations; **Commissioner Graham** moved for qualification of these groups as presented; **Commissioner Heavey** seconded the motion; motion carried with three aye votes.

GENERAL DISCUSSION

Director Miller said a group of distributors met this morning with Commission staff. At the meeting last month, some concerns were raised about the pricing policies. One option discussed was to change the whole regulatory scheme or create new rules to make it even tighter. The distributors agree that the pricing rules should be changed. The Commission will try in the short term to put more emphasis on regulation again with regard to pricing to see if it can be brought under control. There were a lot of complaints. The Commission will be kept informed.

Commissioner Heavey asked if Commission staff is taking any positions on legislation; **Director Miller** said that will be a discussion item during other business tomorrow, because some of the licensees requested that the Commission support some of the bills. He will give a report tomorrow.

Acting Chair Mosbarger called for Executive Session and adjourned the public meeting.

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING FRIDAY, FEBRUARY 10, 1995

Vice Chair Mosbarger called the meeting to order at 10:15 a.m. at the Ramada Governor House Hotel, Olympia, Washington.

MEMBERS PRESENT: **ROBERT M. TULL, Chairman; WANDA MOSBARGER, Vice Chair; PATRICK GRAHAM, and EDWARD HEAVEY.**

OTHERS PRESENT: **FRANK L. MILLER, Director; BEN BISHOP, Deputy Director; SHERRI WINSLOW, Assistant Director, Field Operations; JONATHAN McCOY, Assistant Attorney General; SHARON TOLTON, Assistant Director, Special Operations; CARRIE SUTHERLAND, Special Assistant, Public Affairs; and SUSAN GREEN, Executive Assistant.**

Acting Chair Mosbarger said she will be running the meeting until Chairman Tull arrives.

APPROVAL OF THE MINUTES FROM THE JANUARY 12-13, 1995, MEETING

Commissioner Graham moved for acceptance of the minutes from the January 12-13, 1995, Commission meeting in SeaTac, Washington, as set forth and printed in the agenda packet; **Commissioner Heavey** seconded the motion; motion carried.

STAFF REPORTS

LEGISLATION

Director Miller gave an update on the legislative session. He said House Bill 1447 is a bill regarding reducing gambling taxes for those licensees that are within 35 miles of a tribal casino. This is sponsored by Representative Lisk. Companion Bill in the Senate, SB- 5726, by Senators Prentice and Bower would extend to 50 mile radius. There has not been a hearing as of this date. Senate Bill 5269 raises the maximum cost for raffle tickets to ten dollars from the present limit of five dollars. **Director Miller** said that the Commission supports this bill. He did point out there should be a certain cap because of the inability to regulate before the fact. Senate Bill 5277 states that the Legislature must also approve tribal gaming compacts and the compacts can only come forth when the Legislature is in session. After the most recent

compacts, there has been some question as to whether the Legislature should approve the compacts before forwarding them to the Governor. There had been a hearing but members of the Commission were not asked to testify. Senate Bill 5301 sets limits for tribal casinos back to the limits set in 1991. This bill does nothing to those compacts currently in effect. This bill has had a hearing. Senate Bill 5468 allows for golfing sweepstakes, or "Calcutta" events, which is a player auction. Senate Bill 5602 would authorize gambling devices if they are authorized on Indian or federal lands.

Director Miller explained that basically, if the federal courts by judgment or decree authorize gambling devices for tribes, all other licensees in the state would get them also. This bill directs the Gambling Commission to implement the rules for doing this and would have a significant impact on the agency. Senate Bill 5603 removes pull tabs out of the sight of children in bowling alleys. This bill did have a hearing but hasn't gone anywhere else. The Washington Charitable and Civic Gaming Association also has proposed a bill to reduce the pull tab taxes to 10 percent of the net as opposed to 5 percent of the gross. A presentation will be given later in the meeting. Senate Joint Memorial 8004 by Senator Heavey requests that Congress and the National Indian Gaming Commission not approve the Puyallup Tribes grandfather clause request. The Commission has opposed this and sent letters to the NIGC. There are two gubernatorial appointments, Commissioners Mosbarger and Heavey, that will come up for hearing but have not yet been scheduled. Another bill regarding Problem Gambling would take \$150,000 per year from the Lottery to go to DSHS to help educate in the problem gambling area. So far, there doesn't seem to be any support. **Vice Chair Mosbarger** noted that several names are on every one of the bills discussed; she asked if these people are opposed to Indian gaming or just gambling in general. **Director Miller** said that the legislators have traditionally been opposed to gambling and the expansion of gambling.

TRIBAL GAMING

Director Miller said that on January 26, 1995, Governor Lowry signed the Suquamish compact and the Port Gamble compact, along with seven tribal gaming compact amendments. The Jamestown S'Klallam Tribe opened its Seven Cedars Casino on February 3rd. He gave special notice to Mike Tindall and Fred Wilson, who worked very closely with the Tribe. **Director Miller** also shared that the Commission is close to completing three more compacts; the Nisqually, the Hoh and the Skokomish Tribes are close to tentative agreements.

((Chairman Tull arrived at this time))

ADOPT OR AMEND RULES

PETITION

Amendatory Section WAC 230-04-280 ~~((Notification to law enforcement.))~~ **Licensees must notify law enforcement and local taxing authorities.**

Amendatory Section WAC 230-04-400 **Denial, suspension or revocation of licenses**

Amendatory Section WAC 230-50-010 **Adjudicated proceedings--Hearings**

Ms. Sutherland said the three rules that are up for final action include one that requires the licensees to notify the local taxing authorities, one provides for revocation of gambling licenses for failure to pay gambling taxes and the third is simply to allow the Commission to use the brief

adjudicative proceedings process for the revocation of those licenses. One of the concerns raised by the Commission is the cost that the agency would incur in pursuing these cases. She said that the concern of staff is the importance of getting reimbursed for expenses incurred. **Ms. Sutherland** noted a draft rule had been prepared that includes reimbursement of the agency costs and that copies are available at the back of the room.

Commissioner Heavey said he is not ready to support this rule change even though they initially requested that this item be given consideration. He said it is important that people who don't pay their taxes should not be allowed to conduct gambling activities. He doesn't think it's fair to pass on the cost of that to the rest of the licensees. He said if the costs to the Commission could be recouped somehow, then he may support the change. He said he spoke with Ms. Johnston (Gaming Inspector, City of Bremerton), who has some objections to the rule. He said the Commission shouldn't be giving a blank check in helping out the counties. Both issues should be addressed at the same time and the two groups should cooperate without passing the cost on to the licensees.

Commissioner Graham said he was the one who proposed holding this petition off until this meeting. He said the portion he opposes is the requirement of licensees to notify the taxing authority when they receive a gambling license. He said licensees shouldn't have to waste their time notifying the local authorities when the Gambling Commission is already notifying local law enforcement and taxing authorities by policy. He said he doesn't see why this rule is needed.

Ms. Sutherland said that, in the past, the policy on interpreting this was that if the taxing authority had received a judgment or some sort of settlement that showed the people were in fact delinquent, then the case would be pursued. **Commissioner Graham** also addressed the cost. He said he gets the feeling that the Commission will be flooded with a bunch of back tax cases. The immediate expense in just receiving their request in the mail would be \$500. **Ms. Sutherland** said one of the Commission's concerns was to set a threshold level for the amount that was owed before the Commission would pursue a case. **Commissioner Graham** said the Commission has already probably spent more on a case in Seattle than the man owed in taxes. **Director Miller** said that, in the past, the Commission has had the policy that if the taxing authority had a judgment against the licensee, then it's a simple case and the Commission will take the case.

Chairman Tull stated that at an early point in this process, the Commission had discussed changing the application or reapplication form to include an affirmative representation by the licensee that they were in fact current with all local requirements. The Commission would have a fraudulent representation and the Commission could pursue that type of case. **Director Miller** responded that there are two problems in this issue. The first is the licensee could be delinquent on the taxes but before staff get the word, the license renewal has been mailed out. The Commission can change the application form to say "Are you current with your taxes?" If the licensee answers "yes" and then the Commission finds out they are delinquent, the Commission could then pursue fraudulent charges and that would be a basis for denial. **Chairman Tull** asked if the Commission would support that type of screening and also work with the petitioners in the event the Commission would go into an enforcement-type of mode. He suggested this be deferred until the Commission has had an opportunity to review this issue. **Commissioner Heavey** asked if this could be deferred again until next month. **Mr. McCoy** said this has 180 days from the day it was filed, which would be May since it was filed in November. **Commissioner Heavey** asked if the cost issue could be added to this rule.

Chairman Tull said the application could just be amended to say the licensee has a dispute with such-and-such and enclosed is a copy of the letter, or that the licensee is paying under protest. **Director Miller** said that could be done immediately. This would weed out some of the problems like King County had mentioned. It would be helpful to have input from the Commission on this. If the commissioners agree, the Commission could start a policy change and then work this month on how to get the expenses reimbursed. **Chairman Tull** said there is a concern that the law-abiding licensees should not be penalized for these particular costs. **Director Miller** said that an area to explore is requiring the licensee to pay the Gambling Commission's expenses for taking action in order to get their license back. The Commission has done this in the past as in when cases are brought before the commissioners, the fine is increased to cover expenses.

Acting Chair Mosbarger asked if holding this over another month would be enough time to explore the cost reimbursement issue. **Ms. Sutherland** said she thought it would be reasonable. **Commissioner Heavey** said he thought staff ought to look at the reimbursement issue and the rule changes at the same time. **Director Miller** said the Commission's usual timeframe is to have rules become effective July 1 and January 1. These rules will still be complete in time for the July 1 timeframe.

Chairman Tull moved that this be held over until next month's meeting to give staff time to investigate an application change and continue to work with the petitioners to see if the reimbursement cost recovery issue can be solved. **Commissioner Heavey** asked if one month is enough time to work this out with the counties, have a proposed rule ready to go and not hold it over again. **Ms. Sutherland** thought that one month would be fine. **Commissioner Heavey** seconded the motion.

Doug Lasher, Clark County Treasurer, said he'd like to speak to Commissioner Graham's comment on the licensee having to notify the local taxing authority. He said new licensees claim that they don't know they are suppose to notify the local taxing authority. He'd like to be able to have the licensee notify the city or county by phone to indicate they are doing business. He said in Clark County, there have been a couple of incidences where the licensees have found out much later that they owed taxes and by then have a sum of money that is behind. **Commissioner Graham** asked whether, if the taxing authority is already getting the information that this person has started business, why would the licensee have to also notify the taxing authority. **Mr. Lasher** said it would be helpful if the licensees knew what is expected. The taxing authorities are trying to make it very clear to the licensees.

Linda Nelson, King County Finance in Seattle, said the one thing that really bothers people is that the legitimate licensees are paying taxes and the guy down the street might not be. That's the part that's unfair. She would like an affidavit issued. It is unfair to have one business paying taxes and another not. She thinks the change in the application form is a very good idea. Also, the taxing authority should verify what the licensee says regarding their local taxes. She said the Gambling Commission and the taxing authorities should definitely work together to find an equitable solution. She thinks the violator should pay the penalties imposed.

Barbara Corey, Whatcom County Treasurer, said she agrees with the previous two speakers. If this becomes a WAC rule, it will be a rule that is written down and must be followed year after year. She said they are willing to work with the Commission on cost reimbursement. She

thanked the Commission for considering this petition.

Chuck Russell, Valley Tavern, said the Commission should think long and hard before it becomes involved in enforcing tax collection for local taxing agencies. He believes it is up to the taxing agencies to collect the taxes.

Paula Johnston, license inspector and local gambling enforcement officer in Bremerton, said there are more than 40 gambling licensees and there have only been a couple cases involving delinquent taxes. This petition tells the licensees that the Commission will start proceedings at the start of a delinquency rather than at the end. Currently, by the time the Gambling Commission gets a case, the amount owed has quadrupled or even more. Counties and cities would be more than happy to assist with cost recovery.

Chairman Tull said the motion is still on the table to hold this over until next month; vote taken, motion carried with three aye votes; **Commissioner Graham** voted nay.

LICENSING OF GAMBLING MANAGERS

Amendatory Section WAC 230-02-240 Commercial gambling manager defined.

Amendatory Section WAC 230-02-418 ((Bingo)) Charitable or nonprofit gambling manager defined.

Amendatory Section WAC 230-04-145 Licensing of charitable or nonprofit gambling managers ((of bingo games))--Application procedures.

Amendatory Section WAC 230-04-147 Notification to the commission upon beginning, terminating, or changing responsibilities ((as bingo game)) of charitable or nonprofit gambling managers.

New Section WAC 230-12-079 Duties and responsibilities of a charitable or nonprofit gambling manager.

Amendatory Section WAC 230-20-070 Regulation of managers, operators, and other employees--Charitable or nonprofit organizations.

Ms. Sutherland said Item 4 is for discussion only and final action in March. This is a rules package regarding the licensing of gambling managers or executive directors. The staff discussed this package for a number of months with the charitable/nonprofit study group. These rules provide for the licensing of individuals who have the highest level of authority over the gambling activity, the funds earned from the gambling activity and their disbursement, or those who supervise or manage the gambling activities of charitable or nonprofit organizations.. Staff recommends further discussion.

Chairman Tull called for anyone who wanted to testify on this proposed rule; no one came forward. He said there will be another hearing opportunity at the meeting next month in Tacoma. **Director Miller** said this proposal is a result of a loophole in the existing regulation regarding the regulation of charitable and nonprofit gaming.

COMMERCIAL STIMULANT RULES

Amendatory Section WAC 230-02-350 Commercial stimulant defined.

Amendatory Section WAC 230-02-360 Licensed premises defined.

Amendatory Section WAC 230-02-370 Food and/or drink business defined.

Amendatory Section WAC 230-02-380 **Established business defined.**
Amendatory Section WAC 230-04-080 **Certain activities to be operated as a commercial stimulant only--Licensing of food and/or drink businesses.**
Amendatory Section WAC 230-08-130 **Quarterly activity reports by operators of punchboards and pull tabs.**
Amendatory Section WAC 230-08-160 **Quarterly activity reports by operators of social and public card rooms.**
Repealer WAC 230-02-125 **Adjusted net gambling receipts defined.**
Repealer WAC 230-12-075 **Commercial stimulant compliance.**

Ms. Sutherland said Items 5 A through I are for discussion today with final action possible in March. These changes are to comply with the 1994 legislative change to RCW 9.46.0217. The primary concern here is to determine whether a business is engaged in the sale of food and drink for on-premises consumption as opposed to measuring the gambling activities against the sale of food and drink. This is for further discussion with final action next month.

Chairman Tull asked for anyone who wanted to testify; no one came forward.

RAFFLE RULES

Amendatory Section WAC 230-02-183 **Active member defined**
Amendatory Section WAC 230-08-070 **Raffle records**
Amendatory Section WAC 230-12-040 **No firearms as prizes--Exceptions**
Amendatory Section WAC 230-20-300 **Control of raffle prizes**
Amendatory Section WAC 230-20-325 **Manner of conducting a raffle**
New Section WAC 230-20-335 **Raffles conducted among members of an organization--Procedures--Restrictions**

Ms. Sutherland said Item 6 A-F is a group of rules that apply to raffles and is proposed by staff in conjunction with organizations that hold raffle licenses. The rules basically simplify the record keeping requirements for raffles, allow simplified procedures for members-only raffles, and various other rule changes that help organizations with their raffles. This is for discussion only with final action next month.

Frank Lockhard, Ducks Unlimited, said his group has met with the Gambling Commission quite frequently. They have formed a task force of seven separate nonprofit organizations: Rocky Mountain Elks Foundation, Ducks Unlimited, Foundation for North American Wild Sheep, Mule Deer Foundation, National Wild Turkey Federation, Pheasants Forever, and Trout Unlimited. The task force was formed to hopefully liberalize some of the paperwork. He said one thing the groups all have in common is they all have volunteers so any one day there could be a whole new set of volunteers. He would like to request one change in Item 6B subsection (6). Records shall be maintained at the main administrative or business office of the organization that is located within Washington State. The organizations realized later that not everyone has the same structure so he wanted to propose one change. Reading on, "...If the organization does not have an administrative or business office within Washington State, or if the organization is structured to include more than one chapter or sub-unit that conducts raffles, they shall designate a records custodian that resides in Washington State who shall be responsible for retaining all original records." He would like to change the word "retaining" for "obtaining." He

could not follow the letter of the law if this rule reads "retaining." He is proposing that each sub-unit would retain its own records.

Commissioner Heavey said this is something the staff would need to answer. **Director Miller** said this has been a difficult area. The Commission has found that conservation groups have chapters all over the state that are part of a parent organization. This rule would require the custodian be listed on the application and the Commission would contact that individual to get the records. **Mr. Lockhard** said they are not looking for any lessening of accountability. **Commissioner Graham** suggested striking out "retaining." **Director Miller** explained that the Commission needs a central focal point and somebody to help get the documents together. **Mr. Lockhard** further asked the Commission to keep the paperwork at a minimum for the nonprofit organizations. Between the seven groups of the task force, there are approximately 25,000 members represented.

Rance Block, Washington Field Director of Rocky Mountain Elks Foundation, said staff differed with their opinion on a couple of the rules. His organization has a 50-page volunteer package that explains all the regulations. All of their records are maintained in Missoula, Montana. He said Washington state is the only state that has a supplement to their 50-page regulation packet. He said he has a steady toll of volunteers. On members-only raffles, he said the requirement (pertaining to the threshold level for recording prize winners) should be raised from zero to \$50 to alleviate the requirement that records be kept on prizes as small as a 50-cent key chain. He said the Commission does not agree with him. A substantial number of the prizes awarded average in cost of about \$20.00.

Chairman Tull asked how they deal with the audit requirements with regard to the lower cost prizes. **Mr. Block** said they keep records of anything donated or purchased and where it was used within an event. They also require a list of the items that are used for the prizes for raffles or amusement games. They don't keep a list of every person that wins a prize. **Director Miller** asked how the organization verifies the winners. The Commission has seen in the past that sometimes prizes are not awarded and there is no real way to track that. The \$50 threshold was a way to compromise for members-only raffles.

Commissioner Heavey asked what a members-only raffle is. **Mr. Block** said there are fund raising events that are only open to members. **Commissioner Heavey** asked if a members-only raffle is where people are required to be present to win; **Mr. Bishop** said yes, that's how they do it at their events. In one of the new rules in this section, 6F, the preamble defines a members-only raffle. **Commissioner Heavey** said if the prize isn't given away, then it goes back to the organization. He said he doesn't understand why records need to be kept unless the prize is given to someone who is not present. **Director Miller** said what the Commission had tried to do was structure a simplified system for these types of systems. Under section 6F, this talks about simplified procedures and does require members to be present to win. **Mr. Bishop** said that subsection 2(e) applies to all raffles. Under RCW 9.46.070, Duties and Responsibilities of the Commission, subsection (9) requires that all income from bingo, raffles, and amusement games be recorded and reported. For members-only raffles, the new rule reduces the record retention requirement from three years to one year. **Director Miller** said the threshold prize area needs to be explored. These meetings and negotiations have been quite complex.

Don Kaufman, Big Brothers and Sisters of Spokane, commented on Senate Bill 5269 which proposes to raise the allowed cost of raffle tickets to \$10.00. He said none of these rule

changes address the issue of people under age 18 buying and/or selling raffle tickets. Kids often sell raffle tickets when the amount generated is under \$5,000 with no license. He would like raffle tickets that children are selling be limited to \$1.00. **Director Miller** said this brings up an area that hasn't been discussed by the Commission much. Kids have sold raffle tickets for years. **Chairman Tull** asked if most legitimate organizations would have the same argument. **Mr. Kaufman** said there may be situations where an exemption should be granted. There are controllable situations for raffle tickets.

Commissioner Heavey said this is not an automatic exemption. The provisions that are being discussed are provisions that may take place if the Director approves it. **Chairman Tull** asked if it's an unlicensed raffle (under \$5,000) today, is a person under 18 allowed to sell tickets. **Mr. Bishop** said that people under the age 18 who are members of a group have been allowed by policy to sell the raffle tickets but by law they cannot buy them. **Director Miller** said this rule is not necessarily directed at the under \$5,000 raffles.

Lynn Melby, Director of the Washington State Federation of Clubs, asked about the maintenance of records by fraternal organizations that have bingo operations. He said if the records are not required to be maintained, then there's the risk that the records will not be kept in the first place. Merely being able to call all of the records up from some chapter would not satisfy the Commission's necessity for accountability.

Housekeeping Changes

**Amendatory Section WAC 230-02-010 Washington state gambling commission--
Purpose and organization.**

Ms. Sutherland said Item 7 is a housekeeping change; an amendment to 230-02-010 that just reflects the current number of assistant directors on staff.

**Amendatory Section WAC 230-20-130 Operation of bingo upon retail business--
Conditions**

**Amendatory Section WAC 230-20-620 Amusement games--Objects to be thrown to be
uniform--similar games not to use different object
unless designated**

Ms Sutherland said Item 8 is two housekeeping rules to correct typographical errors.

Addendum -- PETITION

Amendatory Section -- WAC 230-40-400

Ms. Sutherland stated there is an addendum to the agenda, which is the petition submitted by the Recreational Gaming Association. Ron Porter will testify on behalf of the petitioners.

Ron Porter, President of the Recreational Gaming Association, represents the 109 card rooms licensees around the state. He said this rule change is to change the closure hours from 2:00 a.m. to 6:00 a.m. to 4:00 a.m. to 8:00 a.m. This would not be an expansion but a change in the closing hours. This is necessary due to the tribal operations that are open until 4:00 a.m. and it has already caused considerable business loss to card rooms in the area. **Mr. Porter** said there is one additional advantage to this change. Individuals who have been drinking in the card room would have two hours to be in a position where there wouldn't be alcohol served.

Because of this change and the impacts it is having on the card rooms in Seattle, they are asking for an emergency adoption of the amendment.

Steve Downen, Riverside Inn in Tukwila, said the problem is with the casino that is now operating in Anacortes, which is probably 75 miles away from his establishment and is open to 4:00 a.m., the card room players are carpooling from his establishment to the tribal operations. This affects his weekend business. He would certainly like to see the rule changed immediately.

Mark Mitchell, owner of the Drift-on-Inn and Blackjack Cafe in North Seattle, said the Blackjack Cafe had five black jack games day and night before the Tulalip Tribe opened in Marysville and now he has none. He said his customers leave to go play cards on the Indian reservations. He really thinks an emergency ruling would help.

Rick Davis, Charlie Macks and the 21 Club, said the Tulalips are growing and he anticipates losing even more business. He said his customers are also leaving his establishments to drive to the Swinomish Casino and the Lummi's. He believes his business is down about 20 percent.

Sam Lanteau, Hideaway in North Seattle, said he sees many of his long-time customers who have stopped coming to play cards at his place, and are instead going straight to the casinos. The longer hours would help.

Director Miller said this is a very sensitive issue. He said Class II card games at tribal facilities are not under the same restrictions as licensed card rooms in the state of Washington. In order to go beyond 2 a.m., the Tribe must either have no objection from the local law enforcement agencies, or approval. He said there are 115 card rooms in the state. The same standard should be applicable. The level of regulation is commensurate with the wagering taking place.

Commissioner Heavey moved for filing of the rule; **Commissioner Graham** seconded the motion; **Chairman Tull** said this motion and second is based on the petition as written and not as an emergency. **Commissioner Heavey** said the emergency status should be considered and an answer brought by staff to the March meeting to determine whether or not emergency status will be given. **Chairman Tull** asked Mr. McCoy if it is possible for a petition to be transformed into an emergency. **Mr. McCoy** said that at the time of filing it must be designated as emergency or not an emergency. He said in determining emergency status, the rule change must be necessary for the preservation of the public health, safety, or general welfare. If staff determines an emergency does exist, they must submit an explanation along with the rule filing. **Chairman Tull** said the only problem he has in determining this as an emergency is that at the present time it does not contain the requirement to obtain approval from local law enforcement. He said he would be comfortable in taking this as an emergency because it is a direct result of action this Commission has taken previously. He would be comfortable taking emergency action but the commissioners would have to draft a provision that even during the emergency period, the director would have to receive confirmation or the lack of objection or approval from the relevant local jurisdictions. **Chairman Tull** moved that the motion be amended to be filed as an emergency subject to inclusion of the requirement that hours not be implemented except in those instances where the licensee has supplied to the director a written statement from local law enforcement jurisdictions containing no objection to the hourly change. **Commissioner Heavey** accepted this amendment to his motion. **Chairman Tull** called for a brief recess so

that staff has time to consider the possible Liquor Board requirements and other things.

Mr. Davis said his understanding is that all tribes have to do is notify the local law enforcement of their hours. He asked why it couldn't be the same way; just notify the local law enforcement agency to the new hours. He said it would be difficult to gain approval if they have to get it from local law enforcement in order to stay open different hours.

Chairman Tull said that since Commissioner Heavey has a time problem and there are other items on the agenda, the card room issue will have to be brought up in a few moments. **Director Miller** noted there may be an additional rule and there is also a presentation by the Washington Charitable and Civic Gaming Association. He said he also needed to spend some time with the commissioner on some legislation and tax bills.

Ms. Sutherland said that Items 8A and 8B need to be filed. **Chairman Tull** said that there is a motion to file the items 8A and 8B; proposed housekeeping changes to correct typographical errors. **Commissioner Mosbarger** moved to file these rules. **Commissioner Graham** seconded the motion. Vote taken on the filing of the housekeeping changes; motion carried.

COMMENTS OF PUBLIC OR PUBLIC OFFICIALS

Don Kaufman said the Washington Charitable and Civic Gaming Association is taxed at full rates of 10 percent on gross profit for bingo and 5 percent of absolute for pull tabs; the nonprofit licensees are paying more than their fair share in taxes. He said the Commission has the right to endorse needed legislative tax changes and that the Commission could fulfill the Gambling Task Force's recommendations in doing so. Under the current system, only the distributors who sell pull tabs and the cities or counties who collect the taxes are the real winners. He said he will also show how the Commission could help reform the tax structure on pull tabs.

Mr. Kaufman said that in establishing the case for a rewrite of RCW 9.46.110, it is important to review two of the ten recommendations made by the Washington State Legislative Task Force on Gaming Policy in December, 1993: Under Recommendation #6, the Task Force recommends that the Legislature continue to explore ways for charities to improve the current gambling system of raffles, bingo, and casino nights to enable them to raise more money more efficiently. Under Recommendation #10, the Task Force recognizes that some charities have experienced a reduction in revenues due to increased gambling activity in the state. Therefore, the task force encourages the representatives of the tribes currently under compact or involved in active negotiations with the state, representatives of charitable organizations and the Gambling Commission to continue to develop solutions that would increase charitable dollars and make recommendations regarding whether the solutions should be adopted via legislation, agency rule making, or tribal compact. We know that taxes have to be done legislatively.

Mr. Kaufman said the next question in the mind of the Commission may be - whether the Commission will support Legislation, initiated by nonprofits. The answer is an emphatic YES. In RCW 9.46.090, under section (4), "...the Gambling Commission may periodically come before the legislature to talk about the type and the amount of tax that ought to be applied to each type of permitted gambling activity." Under section (5), "...any changes which may be made to the law of this state which furthers the purpose and policies set forth in RCW 9.46.010 as now or hereafter amended." He said the Commission has every right to endorse legislation and the

WCCGA hopes to convince the Commission of that today.

Mr. Kaufman said page 4 of the packet shows that the nonprofit organizations are heavily taxed. One line that was left out is that the nonprofit organizations are not currently having to pay federal unemployment tax which is a very small tax. Nonprofit organizations are obligated to pay every other tax of every other business with the exception that they do not pay income tax on the bingo operation. Nonprofits do have to pay income tax on pull tabs and kitchen if there is a net profit. The tax that nonprofit organizations are paying on bingo and pull tabs far exceeds what we would be paying if we were a profit making entity.

Four of the licensees have volunteered some information that Mr. Kaufman believes is fairly impressive as to the amount of taxes being paid in the state and community. Big Brothers and Sisters in Spokane paid \$471,851 in taxes, licenses, and permits in 1994. The Imperials paid \$275,206, Spokane Youth Sports paid \$261,064 and Big Brothers of King County paid \$336,937. These amount to between 15 and 18 percent of gross profit. When it came down to net, they range from 48 percent of dollars to the charity up to 99 percent.

The next example on page 6 is comparing Big Brothers and Sisters of Spokane to "XYZ widget company." "XYZ" wouldn't have paid any gambling tax so the gambling tax was added back into their bottom line so their bottom line was \$977,709 but they had a tax burden of 20 percent of that to the federal government. Big Brothers and Sisters had gambling tax of \$291,541 while the income tax to the widget company was \$195,542, so Big Brothers and Sisters of Spokane paid almost \$100,000 more in taxes than "XYZ" would have paid. The gambling taxes should not be any higher than the federal income tax structure in this state.

The next page is a comparison to tribal compacts. He said bingo games and pull tabs on tribal lands are not paying any taxes at this time. The compacts that Director Miller has negotiated have a two percent fee on net. Comparing the four licensees that have given this information, it is clear that the Big Brothers of Spokane is spending about \$272,000 more in taxes than a comparable casino, the Imperials spent \$202,000 more for comparable size casino, SYSA paid \$153,000 more, and Big Brothers of King County paid \$205,000 more than a comparable casino.

Mr. Kaufman said bingo taxes are 10 percent of gross profit, which is taxed on dollars after payout. He said they feel that although it is too high a rate, it is at least a reasonable tax. Depending on the payout structure, and it varies between 3.2 percent and 3.5 percent of gross, pull tabs are five percent of absolute gross, which they feel is a pretty unfair tax. The problem is that pull tabs and punchboards are being taxed on gross receipts. This was established primarily because of the stimulant aspects of pull tabs; however, proper recognition wasn't given to the fund raising aspects for nonprofits. Likewise, the stimulant licensees now have minimum stimulant requirements and they do need the net income from punchboards and pull tabs to remain in business today. This detailed information is on the back. For one month of operation from the four licensees that volunteered this information; losses on pull tabs ranged from 4.2 percent to 31 percent. This amounts to the licensees losing between \$16,000 and \$59,000 in actual bottom line losses. The taxes being paid range from \$4,100 to \$9,400.

Page 10 is the WCCGA's proposal, which puts the tax the same as bingo. This chart shows if pull tab taxes were different and they were put on the gross profit, the tax would be on the dollars actually being deposited into their bank accounts. There would be similar savings

across-the-board. These are charitable dollars that are going to go back into the community. The pull tab tax is not a value-added tax, nor is it a sales tax. It comes from gross sales, which are fixed. Everyone is faced with the excise tax already on pull tabs.

Paying more taxes than similar for-profit businesses is not fair. Paying taxes on losses is not fair. Losing revenues to tribal gaming while they only pay two percent of net on casinos and zero percent on bingo and pull tabs is not fair. The WCCGA has formulated a legislative bill to revise RCW 9.46.110 to make the pull tab tax the same as bingo. This legislation does not level the playing field for tribal games, it does not bring the taxes down to a level that speaks to the appropriateness for nonprofits that serve the communities of Washington State, but what it does do is put fairness back into the tax and if at full tax, will reduce the pull tab taxes between 30 and 40 percent. In supporting this legislation the Commission would help fulfill the legislative task force's recommendations. Most nonprofits will raise more money from the same operation, which makes them more efficient. The House Bills have been inserted in the documents in the back on the addendum - the House Bill is now 1826 and the Senate Bill is 5829.

Chairman Tull thanked Mr. Kaufman for the excellent presentation. **Chairman Tull** asked if the legislation had been shared with staff previously. **Mr. Kaufman** answered yes. He said the problem is one of timing; all the bills have to be out before the next Commission meeting. Both bills have been filed and should come up for a hearing next week. **Director Miller** said these particular bills reduce taxes. He said tribes pay two percent of the net win, not the net income, which is vastly different. The bill has no impact on the Commission; fees stay the same. Staff has no objection to this legislation. **Director Miller** pointed out there are two other bills that are similar by the commercial industry that reduce taxes to a lower percentage if they are within so many miles of an Indian casino. The Licensed Beverage Association suggested that if the Commission makes a statement on one, they need to make a statement on both.

UNFINISHED BUSINESS

Chairman Tull asked for Director Miller's view on the amendatory language for the card room petition.

Director Miller said the language staff proposes for WAC 230-40-400 -- Hours limited for card games: "Licensees shall not allow use of their premises for card playing between the hours of 2:00 a.m. and 6:00 a.m. Provided, a licensee may extend hours of operation up to 4:00 a.m. upon application to the Commission and so long as no objection is raised by a local law enforcement entity. In any event, a licensee must observe a four-hour period of closure before beginning the next period of operation."

Sergeant John Lindner, King County Police Department, said he and his colleagues looked this over and they don't think there's a problem with enforcement on their part. One of the benefits may be that it would have an effect on the "sneak" games that occur at 2:00 a.m.

Chairman Tull said if this is passed, then during the next 30 days or so until the next Commission meeting, licensees could apply to the Commission to adjust their hours and the Commission staff would determine whether they would make their own phone calls to local law enforcement. During that same time period, the rest of this issue could be flushed out. If staff comes back with problems, the petition could be un-filed. This is not a long term commitment if it doesn't work out. After hearing how much gambling taxes the licensee spoke about paying, the Commission is actually helping that municipality, at least temporarily, to protect that revenue stream. There is no serious likelihood, initially, that there would be a law enforcement problem.

Chairman Tull said he accepts the language Director Miller read, and he moved to accept this amendment to Commissioner Heavey's previous motion; **Commissioner Mosbarger** seconded the motion. **Commissioner Heavey** asked if that means card rooms can begin applying to stay open these hours tomorrow; **Mr. McCoy** said they would have to wait until the rule has been filed with the Code Reviser and actually published, which takes approximately one week.

Mr. Davis asked if they would have to apply or would just have to give notification; **Director Miller** added the language that they may extend their hours "...with the consent of the director..." He said if there are some card rooms that are currently having problems, it is important to have discretion.

Mr. Davis asked what the timeframe will be on application processing; **Director Miller** said the rule must be filed first, and once the application is received by the Commission, staff will have to notify local law enforcement and make sure there's no objection, so this could take two to three weeks from now, if all goes well.

Chairman Tull deemed the motion amended as indicated by Director Miller. **Commissioner Heavey** said he is reluctant to make this change so quickly and without considering the full implications of what is being done by changing hours. He said local law enforcement should have a chance to look at the implications fully. He said he has no problem with holding this over the next 30 days to the March meeting. He said he has no philosophical objections to this but he does not think the card rooms are going out of business tomorrow if this is not passed immediately. **Chairman Tull** said the Commission has been extremely cooperative in terms of implementation timing with compacted tribes in reflection of their extreme cooperativeness and

the special nature of those relationships. In this particular situation, it is still within Director Miller's discretion to grant a particular hour change request. He personally is very comfortable with taking this action today and if any problems surface, the petition would disappear in March. He said it's very unlikely there will be problems.

Director Miller said the Gambling Commission is the primary regulatory body out there on this issue. By contacting local law enforcement as staff has always done, we can see what law enforcement have in the way of staffing in the area and other problems they may be dealing with in the area. If law enforcement objects, there will not be an extension of hours.

Commissioner Heavey clarified that this action is not taken to force the director to approve applications unless he thinks he should. The Commission is not saying this is something the director must do but should take the time necessary to adequately address the issues that may be involved in terms of enforcement by the local police, etc. **Chairman Tull** concurred with Commissioner Heavey's remarks and said the director has a significant amount of discretion given to him by the Commission and that will continue, particularly during an emergency period.

Chairman Tull stated the motion to adopt an emergency rule with the provisions that have been read and slightly revised by Director Miller over the last few minutes; **Commissioner Heavey** accepted the motion as stated by Chairman Tull; motion carried with three aye votes; **Commissioner Graham** voted against the passage of this emergency rule change. **Chairman Tull** said this required and received three aye votes and is passed.

Chairman Tull said he is comfortable with recommending the passage of the legislation as explained by Mr. Kaufman.

Commissioner Heavey said he has no problem with the suggestion by Chairman Tull. **Commissioner Mosbarger** agreed that she has no problem with the suggestion and that information may be provided to the Legislature. **Chairman Tull** moved that a letter in concert with the Director be authorized in support of legislation with the concurrence of the other commissioners. **Director Miller** said that one point to keep in mind is given the increase in competition of the gambling dollar and given the task force especially, the Commission needs to look at ways to make it more profitable. **Chairman Tull** noted that, give the activities of the various licensees, it makes him wonder if there shouldn't be a substantial reduction. **Director Miller** asked if this would apply to the other legislation. **Chairman Tull** answered only for the nonprofit organizations at this time. Vote taken, motion carried.

He called for an executive session, provided that Commissioner Mosbarger is able to return in a few moments. (No executive session was held)

NOTE: THESE PRINTED MINUTES PLUS THE TAPES CONSTITUTE THE FULL MINUTES.

Susan D. Green
Executive Assistant